

AO 120 (Rev. 3/04)

<b>Mail Stop 8</b> <b>TO: Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Middle District of Florida, Tampa on the following ☐ Patents or ☐ Trademarks:

DOCKET NO. 8:09-cv-27-T-26MAP	DATE FILED 1/9/09	U.S. DISTRICT COURT Middle District of Florida - Tampa Division
PLAINTIFF		DEFENDANT
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 See attached complaint		
2 <i>17 Feb pg. 3</i>		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK
1	
2	
3	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK Sheryl L. Loesch	(BY) DEPUTY CLERK s/ J. Hueting	DATE 1/14/09
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

individual Defendants, failed to maintain some of the patents, resulting in the expiration of the patent for failure to pay maintenance fees. Defendant GEG, under the complete control of the individual Defendants, failed to pay HEBERT's salary in Florida as required under the employment agreement. Defendant GEG, under the complete control of the individual Defendants, failed to pay rent on the Florida office, resulting in GEG's landlord in Florida confiscating all equipment and prototypes on which HEBERT had been working. HEBERT had continued to diligently work even though he was not receiving his salary or royalties because of the promises that the money for rent, salary, royalties, etc. would be coming after the closing of the Cherokee Deal.

28. The individual Defendants affirmatively misrepresented their true intentions for the use of the additional financing in order to induce HEBERT to continue his employment with GEG, to enter into new employment agreements with GEG, and to enter into new patent assignment agreements. The individual Defendants failed to disclose to HEBERT their true intentions despite having an obligation to advise HEBERT to do so.

29. By obtaining financing and disbursing it for their own benefit in the form of cash and stock, the individual Defendants breached their fiduciary obligations to GEG and to HEBERT, and caused GEG to fail to make the required payments to HEBERT or to otherwise perform the obligations of the Patent Assignment Agreements and Employment Agreement.

30. The Patent Assignment Agreements provide in paragraph 8.2 that if GEG, the Assignee, fails to pay the required royalties, Plaintiff HEBERT, the Assignor, may terminate the Assignment Agreements provided (a) Assignor provides written notice listing the specific failure of performance, (b) Assignee fails to cure within forty-five (45) days following receipt of such notice, and (c) the default is in fact existing. Paragraph 8.2 further provides that GEG, the

Assignee, may institute arbitration proceedings within the 45 day cure period if it disputes the existence of a default.

31. Plaintiff provided written notice to GEG and the individual Defendants on September 1, 2006 that GEG was in default, citing failure to pay royalties, failure to use reasonable efforts to commercialize and failure to maintain patents and that the patent assignments and Agreements were terminated effective in 45 days unless timely cured before then.

32. GEG did not institute arbitration proceedings to dispute the existence of the defaults, and thus waived the right to do so. GEG also failed to cure its breaches within the 45 day cure period provided for in the Agreements, resulting in termination of the patent assignments and Patent Assignment Agreements as provided for in the Patent Assignment Agreements.

33. The Patent Assignment Agreements provide in paragraph 8.5 that upon termination, the rights transferred in the Assignment Agreements revert back to HEBERT, the Assignor. Thus, on or about October 15, 2006, the HEBERT PATENTS reverted back to HEBERT. The First Amendment to the Assignment Agreements requires GEG to “execute and deliver such other documents, and take such other action, as may be necessary or appropriate in order to consummate more effectively the transactions contemplated” in the Assignments and Agreements. (First Amendment ¶6). GEG has failed to execute or deliver any documents memorializing that the HEBERT PATENTS have reverted to HEBERT. As a result, there remains a cloud over the title of the HEBERT PATENTS hindering HEBERT from commercializing them at this time.

34. Moreover, after the HEBERT PATENTS reverted back to HEBERT, GEG continued to offer for sale and/or sell certain of the patented technology in Florida and elsewhere including the EER+ and EERMAX technologies, the “E” coil evaporator and the Extra-Evap, thus infringing Hebert patents 6,070,423; 6,857,285; 7,150,160; 6,116,048; and 6,460,358.

35. As a result of HEBERT’s termination of the Patent Assignment Agreements, GEG had actual notice of the termination of the license agreements. GEG’s post-termination infringement was conducted with knowledge of the infringement and with the specific intent to infringe, and thus constitutes willful infringement.

36. Upon information and belief, the decision to continue to market HEBERT’s patented technology and thus infringe the HEBERT PATENTS was made by the individual Defendants. These individuals therefore directly caused GEG to infringe the HEBERT PATENTS, including the infringement that occurred in Florida. The individual Defendants specifically intended to infringe the patents.

37. At the time of the infringement, GEG was a corporation without any assets because the individual Defendants had used the corporate assets to pay themselves and maintain their Plano, Texas offices for other companies that they owned. During a material portion of the time during when the breach of contract acts and omissions occurred, GEG was a corporation without any assets because the individual Defendants used the corporate assets of GEG to pay themselves and to maintain their Plano, Texas offices for other companies without any purpose which served the interests of GEG.

38. The individual Defendants had complete control over GEG’s acts and omissions in Florida.

39. The individual Defendants conspired to defraud HEBERT by continuing to promise future fulfillment of GEG's obligations upon receipt of funding from a major investor, with knowledge that once the funding was received the individual Defendants would take the funds for their own purposes rather than the purposes of GEG.

40. HEBERT relied on the Defendants' fraudulent representations and continued to diligently work in Florida for GEG, although the Defendants provided no funding for his office, employees, salaries, or HEBERT's royalties, rather than commercializing the HEBERT PATENTS through other means.

41. HEBERT has been damaged in an amount to be determined at trial.

42. HEBERT has retained the undersigned counsel to represent him in this matter and has agreed to pay his counsel a reasonable fee for their services.

43. All conditions precedent to this action have been performed or have occurred.

### COUNT I

#### QUIET TITLE - GEG

44. This is an action to quiet title to the HEBERT PATENTS, and for damages and injunctive relief.

45. HEBERT realleges paragraphs 1 through 43 as if fully set forth herein.

46. HEBERT is the true titleholder to the HEBERT PATENTS by virtue of the Assignments.

47. Specifically, pursuant to paragraph 8.5 of the Patent Assignment Agreements, ownership in the HEBERT PATENTS reverted to HEBERT upon termination of the Assignments by HEBERT for GEG's failure to pay royalties, and failure to perform other obligations of the Assignments.

48. GEG has failed to execute and deliver documentation acknowledging that ownership to the patents in suit reverted to HEBERT for the HEBERT PATENTS, except that GEG has done so for patent No. 6,442,903 and patent No. 7,055,339.

49. GEG has failed to execute the documents necessary to show that the reversion back to HEBERT is uncontested and to properly record the reversion back to HEBERT in the public assignment records maintained by the United States Patent Office for all but patent No. 6,442,903 and patent No 7,055,339.

50. GEG's failure to execute and deliver the above referenced documents and acknowledge the reversion back to HEBERT constitutes a claim of inferior rights, title or interests in the HEBERT PATENTS, and such claim constitutes a cloud on HEBERT'S title.

51. HEBERT has continued to sustain damages as a result of GEG's wrongful cloud on the title of most of the HEBERT PATENTS.

52. HEBERT will be irreparably harmed by GEG's failure to execute and deliver a document evidencing the assignment back to HEBERT for recordation at the United States Patent and Trademark Office absent injunctive relief.

53. HEBERT has no adequate remedy at law.

WHEREFORE, HEBERT demands judgment against GEG (a) finding and declaring that GEG has no right title, or interest in the HEBERT PATENTS; (b) quieting title to the HEBERT PATENTS in HEBERT; (c) awarding money damages, interest, and costs of this suit to HEBERT; (d) requiring GEG to execute and deliver a legally sufficient assignment document that evidences the reversion back to HEBERT of all right, title, and interest in the HEBERT PATENTS as of the date of termination of the Patent Assignment Agreements ; ie. October 15, 2006; and (e) granting HEBERT such other relief as the Court deems proper.

**COUNT II**

**BREACH OF PATENT ASSIGNMENTS-GEG**

54. HEBERT realleges paragraphs 1 through 43 as if fully set forth herein.
55. GEG has breached the Patent Assignment Agreements as set forth more fully above.
56. As a direct and proximate result of GEG's breach of contract, HEBERT has been damaged in an amount to be determined at trial.

**COUNT III**

**BREACH OF EMPLOYMENT AGREEMENTS-GEG**

57. HEBERT realleges paragraphs 1 through 43 as if fully set forth herein.
58. GEG has breached the Employment Agreement as set forth more fully above.
59. As a direct and proximate result of GEG's breach of contract, HEBERT has been damaged in an amount to be determined at trial.

**COUNT IV**

**INDUCEMENT OF INFRINGEMENT-BAILEY, WEBB AND BURKHALTER**

60. HEBERT realleges paragraphs 1 through 43 as if fully set forth herein.
61. The individual Defendants have actively induced direct infringement of one or more claims of each of the HEBERT PATENTS and are therefore liable as infringers under Section 271(b) of Chapter 35 of the U.S. Code.
62. Defendants' affirmative acts to induce infringement have been taken with knowledge of the HEBERT PATENTS.

63. Defendants' affirmative acts to induce infringement have been taken with the intent to induce infringement of the HEBERT PATENTS and with knowledge that their affirmative acts would result in direct infringement of the HEBERT PATENTS.

64. Defendants' inducement of infringement has been and continues to be willful, intentional and deliberate.

65. One or more instances of Defendants' patent infringement has occurred in Florida.

66. Defendants will continue to so infringe unless enjoined by the Court.

67. HEBERT has been damaged and continues to be damaged by the infringing acts of Defendants.

#### **COUNT V**

#### **DIRECT PATENT INFRINGEMENT**

#### **GEG, BAILEY, WEBB AND BURKHALTER**

68. HEBERT realleges paragraphs 1 through 43 as if fully set forth herein.

69. Defendants, GEG, WEBB, BAILEY and BURKHALTER have directly infringed the HEBERT PATENTS by making, using, or selling the inventions claimed therein within the United States, including within the state of Florida.

70. Defendants are therefore liable as infringers under Section 271(a) of Chapter 35 of the U.S. Code.

71. Defendants direct infringement has been willful, intentional and deliberate.

72. Defendants will continue to infringe unless enjoined by the Court.

73. HEBERT has been damaged and continues to be damaged by the infringing acts of Defendants.



**COUNT VI**

**BREACH OF FIDUCIARY DUTY- BAILEY, WEBB AND BURKHALTER**

74. HEBERT realleges paragraphs 1 through 43 as if fully set forth herein.

75. The individual Defendants, as controlling shareholders, officers and directors of GEG, owed a fiduciary duty and duty of disclosure to HEBERT, as a minority shareholder, to act with fidelity and utmost good faith, and to deal openly and honestly with HEBERT and to not engage in self dealing whereby they would make secret profits at Plaintiff's expense.

76. The individual Defendants breached that duty by their conduct as set forth above.

77. As a direct and proximate result of the individual Defendants breach of fiduciary duty, the Plaintiff HEBERT has been damaged.

**COUNT VII**

**CONSTRUCTIVE FRAUD- BAILEY, WEBB AND BURKHALTER**

78. The Plaintiff realleges and incorporates by reference the allegations of paragraphs 74-77 above.

79. The individual Defendants abused their fiduciary relationship with the Plaintiff through their acts as described above. The individual Defendants committed a constructive fraud against the Plaintiff by abusing their fiduciary relationship with the Plaintiff at the expense of the Plaintiff, as more fully described above.

80. As a direct and proximate result of the constructive fraud of the individual Defendants, the Plaintiff has been damaged.

**COUNT VIII**

**FRAUD IN THE INDUCEMENT-ALL DEFENDANTS**

81. The Plaintiff realleges and incorporates by reference the allegations of paragraphs 1- 43 above.

82. The individual Defendants, acting on behalf of and in concert with GEG, GEAG and Turnaround Specialists and acting in concert with each other, made misrepresentations and false statements concerning material facts to HEBERT, as more fully set forth in paragraphs 10-40, above, and specifically paragraphs 16 - 20, 22, 25, 28, and 39.

83. The Defendants had knowledge that the representations and statements set forth above were false, as more fully set forth in paragraphs 10-40, above, and specifically paragraphs 16 - 20, 22, 25, 28, and 39.

84. The Defendants, acting in concert, also made false promises to HEBERT as more fully set forth in paragraphs 10-40, above, and specifically paragraphs 16 - 20, 22, 25, 28, and 39.

85. The Defendants had knowledge that the promises were false when they made them, as more fully set forth in paragraphs 10-40, above, and specifically paragraphs 16 - 20, 22, 25, 28, and 39.

86. The Defendants had no intent to perform the false promises as set forth above, or they had the specific intent not to perform them, as more fully set forth in paragraphs 10-40, above, and specifically paragraphs 16 - 20, 22, 25, 28, and 39.

87. The Defendants intended to induce HEBERT's reliance upon their misrepresentations, false statements, and false promises, as more fully set forth in paragraphs 10-40, above, and specifically paragraphs 25, 26, and 28.

88. HEBERT justifiably relied to his detriment on the misrepresentations, false statements, and false promises of the Defendants, resulting in injury to HEBERT in Florida, as more fully set forth in paragraphs 10-40, above, and specifically paragraphs 21, 23 - 25, 27, 29, and 40 - 42.

89. As a direct and proximate result of the fraudulent inducement of the Defendants, HEBERT has been damaged as set forth more fully in paragraphs 10-40, above, and specifically paragraphs 21, 23-25, 27, 29, and 40-42, in an amount to be determined at trial.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, HEBERT requests the following relief from this honorable Court:

A. Preliminary and permanent injunctions against GEG, BAILEY, WEBB AND BURKHALTER prohibiting their continued direct infringement and inducement of infringement of the HEBERT PATENTS;

B. That the Defendants, GEG, BAILEY, WEBB AND BURKHALTER, their agents, sales representatives, distributors, servants and employees, attorneys, affiliates, subsidiaries, successors and assigns, and any and all persons or entities acting at, through, under or in active concert or in participation with any or all of them, be enjoined and restrained permanently, from infringing, and/or actively inducing others to infringe the patents in suit; and be required to discontinue offering for sale on the GEG web site any product covered by the patents in suit.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

THOMAS H. HEBERT,

Plaintiff

v.

GLOBAL ENERGY GROUP, INC., a  
Delaware corporation; TURNAROUND  
SPECIALISTS, L.L.C.; a Texas Limited  
Liability Company; GLOBAL ENERGY  
ACQUISITION GROUP, L.L.C., an  
Oklahoma Limited Liability Company; JOHN  
BAILEY; DAVID WEBB and HENRY  
BURKHALTER,

CASE NO.:

Defendants.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**  
**(INJUNCTIVE RELIEF REQUESTED)**

Plaintiff, THOMAS H. HEBERT, sues Defendants, GLOBAL ENERGY GROUP, INC.,  
TURNAROUND SPECIALISTS, L.L.C., GLOBAL ENERGY ACQUISITION GROUP,  
L.L.C., JOHN BAILEY, DAVID WEBB, and HENRY BURKHALTER and alleges as follows:

**THE PARTIES**

1. Plaintiff, Thomas H. Hebert ("HEBERT") is a Florida resident who recognized a need for improved energy efficiency in the operation of air conditioning and heating systems. HEBERT successfully invented and patented inventions to fill this need. The resulting patents and pending applications are hereinafter referred to in aggregate as the "HEBERT PATENTS".

2. Upon information and belief, Defendant, Global Energy Group, Inc. ("GEG") is a Delaware Corporation that was at all times material and continues to be managed and directed

C. A judgment against GEG, BAILEY, WEBB AND BURKHALTER in favor of Hebert for all damages caused by Defendants' infringement, together with prejudgment interest, post-judgment interest, and costs;

D. A determination of willful infringement pursuant to 35 U.S.C. § 284, and a judgment against GEG, BAILEY, WEBB AND BURKHALTER and in favor of Hebert of three times the amount of damages so determined;

E. A finding that this case is exceptional pursuant to 35 U.S.C. § 285, and an award to HEBERT of costs and reasonable attorneys' fees;

F. A judgment against GEG in favor of Hebert for all damages caused by GEG's breach of contract, together with prejudgment interest, post-judgment interest, and costs;

G. A judgment against GEG, BAILEY, WEBB AND BURKHALTER in favor of Hebert for all damages caused by those Defendants' breach of fiduciary duty and constructive fraud, together with prejudgment interest, post-judgment interest, and costs;

H. A judgment against each and every Defendant and in favor of Hebert for all damages caused by Defendants' fraud in the inducement, together with prejudgment interest, post-judgment interest, and costs;

I. Imposition of a constructive trust for the benefit of the Plaintiff over the funds invested in GEG and transferred to GEAG, Turnaround Specialists, LLC or any other entity controlled by the individual Defendants and over any other secret profits obtained by the individual Defendants at the expense of the Plaintiff;

J. That Defendants be required to file with the Court within thirty (30) days after entry of final judgment of this cause a written statement under oath setting forth the manner in which Defendants have complied with the final judgment;

K. An order quieting title in the HEBERT PATENTS in HEBERT and declaring HEBERT to be the lawful owner of all right, title and interest in the HEBERT PATENTS; and

L. Such other and further relief as this Court deems just and equitable.

**JURY DEMAND**

Plaintiff, HEBERT hereby demands and requests trial by jury of all issues raised and claims made that are triable by jury.

Dated: January 8, 2009

By: /s/ G. Donovan Conwell, Jr.

G. Donovan Conwell, Jr.

Florida Bar No: 0371319

**CONWELL KIRKPATRICK, P.A.**

2701 North Rocky Point Drive, Suite 1200

Tampa, FL 33607

(813) 282-8000;

(813) 282-8800 (Facsimile)

dconwell@CKbusinesslaw.com

through its corporate contact office in Plano, Texas. Upon information and belief, GEG has been inactive for a substantial period of time.

3. Upon information and belief, Defendant, Turnaround Specialists, L.L.C. is a Texas Limited Liability Company that the individual Defendants used to divert funds of GEG to themselves.

4. Upon information and belief, Defendant, Global Energy Acquisition Group, L.L.C. ("GEAG") is an Oklahoma Limited Liability Company that was owned and controlled by one or more of the Defendants, and which the individual Defendants used to create a financing scheme that allowed the individual Defendants to divert funds to themselves that should have gone to HEBERT for royalties or to commercialize the HEBERT PATENTS identified below.

5. Upon information and belief, individual Defendants John R. Bailey ("BAILEY"), David Webb ("WEBB"), and Henry Burkhalter ("BURKHALTER") (collectively referred to as the "individual Defendants") are each residents of Texas who were shareholders, officers and/or directors of GEG at times relevant to this action.

6. Upon information and belief, individual Defendants BAILEY, WEBB, and BURKHALTER have been at times relevant and continue to be the dominant force of GEG, controlling the day-to-day operations of GEG, including, but not limited to, the actions complained of herein.

### **JURISDICTION AND VENUE**

7. This is an action for patent infringement, fraud in the inducement, constructive fraud, breach of fiduciary duty, breach of contract, and quiet title concerning the ownership of the HEBERT PATENTS. The patent infringement claims arise under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction over the subject matter of the patent claims under 28 U.S.C. §§ 1331 and 1338(a). This Court has

original jurisdiction over the remaining claims pursuant to 28 U.S.C. §§ 1367. Jurisdiction is also proper pursuant to 28 U.S.C. §§ 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

8. The Court has personal jurisdiction over each of the Defendants pursuant to Fla. Stat. §§48.193(1)(a) and §§48.193(1)(b) because at all times relevant to the allegations contained herein, Defendants were engaging in business in the State of Florida, were committing tortious acts and/or conspiring to commit tortious acts within the State of Florida or that caused harm within Florida, and/or were breaching contractual obligations that were required by contract to be performed in the State of Florida.

9. Venue in this Court is proper based upon 28 U.S.C. §§ 1391(b) in that a substantial part of the events or omissions giving rise to the claims occurred in this district. Further, GEG has waived any objection to this venue pursuant to the patent assignment agreements that are attached hereto and discussed further herein.

### **FACTS SUPPORTING REQUESTED RELIEF**

10. Plaintiff HEBERT is the inventor of a variety of inventions that improve the energy efficiency of air conditioning and heating systems. Because the inventions resulted in novel and unique solutions to important problems, HEBERT was awarded numerous patents by the United States Patent and Trademark Office for his inventions, including the following: Patent No. 6,167,715; Patent No. 6,820,420; Patent No. 6,948,916; Patent No. 5,970,728; Patent No. 7,055,339; Patent No. 6,442,903; Patent No. 6,070,423; Patent No. 6,857,285; Patent No. 7,150,160; Patent No. 6,116,048; Patent No. 7,139,564; Patent No. 4,373,346; Patent No. 4,599,870; Patent No. 6,460,358; Patent No. 6,237,359; Patent No. 6,898,947; Patent No. 7,032,411 (the "HEBERT PATENTS"). The first page of each of these patents is attached hereto as Composite Exhibit A.



11. HEBERT worked diligently to commercialize his patented technology and make it available to the world. To that end, he entered into a series of Patent Assignment Agreements with Defendant GEG in Florida.

12. GEG is a Delaware corporation that was formed in 1999 for the purpose of manufacturing and distributing devices to improve the efficiency of heating and air conditioning systems. GEG applied for authorization to transact business in Florida in January of 2002. (See Application By Foreign Corporation For Authorization To Transact Business In Florida attached as Exhibit B.) Based upon information and belief, at the time of the filing of this Complaint, GEG is no longer active, and its authorization to conduct business in Florida was revoked in 2007 for failure to file a 2007 annual report. At all relevant times, Hebert has been a minority shareholder of GEG.

13. The Patent Assignment Agreements between HEBERT and Defendant GEG (hereinafter referred to in aggregate as "Assignments") are attached as Composite Exhibit C. Many of the Assignments involve patents and patent applications that were initially assigned to Global Energy and Environmental Research, Inc. (GEER), and then subsequently assigned to GEG. Most of the Assignments were negotiated and executed by both parties in Florida. One of the Assignments may have been executed by GEG in Texas and subsequently mailed to HEBERT in Florida.

14. According to the Assignments, Hebert transferred all of his right, title and interest in the HEBERT PATENTS to Defendant GEG, (*see* Article II of the Assignments), subject to various conditions set forth in the Assignments. One of the enumerated conditions is that the assignments are conditioned upon GEG's payment of certain royalties, including minimum royalties, in Florida. (*See* Article III of the Assignments). GEG was also obligated to

commercialize the technology claimed in the patents (*see* Article IV of the Assignments), and pay all fees associated with maintaining the patents.

15. Upon information and belief, in approximately December of 2003, the individual Defendants, BAILEY, WEBB, and BURKHALTER, utilized a complicated financing transaction to obtain complete control of GEG by acquiring the majority of the voting stock of GEG, and becoming its officers and directors. As officers/directors and shareholders of GEG, the individual Defendants owed a fiduciary duty to GEG and to all shareholders of GEG, including HEBERT, to avoid self-dealing or other actions contrary to the interests of GEG and HEBERT.

16. Upon information and belief, the individual Defendants took control of GEG through GEAG. Upon information and belief, GEAG is an Oklahoma Limited Liability Company owned and/or controlled by WEBB. Essentially, GEAG pledged financing for GEG in exchange for voting control and the ability to appoint all of GEG's directors. GEAG, acting through WEBB, used its control of GEG to require GEG to enter into a Turnaround Services Agreement with Turnaround Specialists, L.L.C. Turnaround Specialists, L.L.C. is or was at all times material owned by BAILEY and another individual named Carlos Coe. The Turnaround Services Agreement required GEG to pay to Turnaround Specialists, L.L.C. \$45,000.00 per month beginning on or about December 1, 2003 for the services of BAILEY and Carlos Coe as officers/directors of GEG. The Turnaround Services Agreement also required a \$1,000,000.00 payment to Turnaround Specialists, L.L.C. upon a merger or sale of more than 50% of GEG stock. The individual defendants required GEG to enter into the Turnaround Services Agreement without the knowledge or consent of HEBERT. Turnaround Specialists did not provide any service to earn these payments or the fee was grossly excessive for any service

provided, and the excessive payments were part of a scheme by the individual Defendants to pay money to themselves to which they were not entitled.

17. Upon information and belief, the individual Defendants understood that a substantial portion, if not all, of the financing provided by GEAG would be paid to themselves, directly or indirectly through Turnaround Specialists or other entities controlled by the individual Defendants. Turnaround Specialists, L.L.C. and GEAG used the same Plano, Texas office address. The individual Defendants all received their business mail at this address.

18. Upon taking control of GEG as set forth above, the individual Defendants began acting in concert to negotiate with HEBERT regarding GEG's contractual obligations with HEBERT. In these negotiations, however, they did not disclose that all of the financing they would be putting into GEG or obtaining from third party investors for GEG would be used to pay themselves and Turnaround Specialists, L.L.C. Instead, they represented to HEBERT, and promised to HEBERT, that the financing would be used to pay royalties owed to him, to finance an office for him to serve as Chief Technology Officer, and to commercialize the HEBERT PATENTS pursuant to the Assignments.

19. The individual Defendants had no intent to allow the money invested in GEG to be used to pay royalties to Hebert, to commercialize the HEBERT PATENTS or to perform any of the promises to Hebert. Since the individual Defendants controlled all actions of GEG, defendant GEG had no intent to meet the contractual obligations it owed to HEBERT.

20. Despite their knowledge of their true intentions to disburse any additional financing to themselves, the individual Defendants continued to promise HEBERT that GEG would meet its obligations under the Patent Assignment Agreements.

21. In reliance on these continued misrepresentations, HEBERT entered into an employment agreement with GEG dated January 1, 2004, as well as an amendment to an employment agreement dated January 1, 2005. (See attached composite Exhibit D). In reliance on these misrepresentations, HEBERT entered into an additional Patent Assignment Agreement on May 3, 2005, attached to this Complaint as Exhibit E.

22. Under the employment agreement, GEG was obligated to pay HEBERT a salary, maintain an office and staff for him, purchase life insurance, provide customary benefits, and pay travel expenses. GEG, under the complete control of the individual Defendants, breached their obligations to HEBERT under the employment agreement. GEG and the individual Defendants did not intend to perform the employment agreement when GEG entered into it because the individual Defendants knew the financing would be used to pay themselves.

23. HEBERT relied on the misrepresentations of the individual Defendants to his detriment because had he known the true intentions of the individual Defendants, he would not have permitted them to take control over GEG and he would have taken steps to prevent them from taking control of GEG and ownership of the HEBERT PATENTS.

24. As a direct and proximate result of HEBERT's reliance upon the Defendants misrepresentations, HEBERT's shareholder interest in GEG was substantially diluted and HEBERT lost control of the commercialization of his patents.

25. HEBERT further relied on the misrepresentations of the individual Defendants to his detriment by continuing to commit himself and his patents to GEG rather than obtaining other opportunities to commercialize his patents. More specifically, the individual Defendants misrepresented their true intentions to HEBERT to induce him to continue to forego royalty payments, salary, and other monies and benefits owed to him on the promise that they would be

raising investment funds for GEG which they would use to “turn the business around” and commercialize his patents. The individual Defendants induced HEBERT through their misrepresentations to enter into a new royalty payment agreement for the HEBERT PATENTS, reducing the royalty rate from 5% to 3%, and foregoing minimum royalties until April of 2004. They further induced HEBERT to enter into a Second Amendment to the Assignments, furthering reducing and/or delaying payments to HEBERT. If HEBERT had known the individual Defendants would be diverting the funds to themselves, he would not have entered into new royalty agreements and would not have agreed to forego past minimum royalties. In addition, he would have terminated the Assignments for failure to pay royalties and for other breaches, and obtained other commercialization opportunities.

26. The individual Defendants failed to disclose to HEBERT that financing for GEG would be used to pay themselves. They did so in order to entice HEBERT to remain with GEG, keep his patents with GEG and reduce the amounts owed by GEG to HEBERT on paper, so they could obtain financing from third parties which they could then divert to themselves.

27. Upon information and belief, GEG closed a deal to obtain more than \$4 million in funding from the Cherokee Nation on or about January of 2006, and received approximately \$3.2 million in funding shortly after the closing. The individual Defendants paid the majority of the funds directly and indirectly to themselves rather than to commercialize the HEBERT PATENTS or to pay the royalties owed to HEBERT. Defendant GEG, under the complete control of the individual Defendants, failed to pay the royalties that were due to HEBERT under the Assignments. Defendant GEG, under the complete control of the individual defendants, also failed to make reasonable efforts to commercialize the patented technology, which obligation GEG owed to HEBERT in Florida. Defendant GEG, under the complete control of the